

FILED
IN CLERKS OFFICE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2004 OCT -8 P 1:35
ELEANOR J. KERRIGAN and) C.A. No.:
SEAN J. KERRIGAN,)
a minor child, by his parent and next best friend, Eleanor J. Kerrigan)
friend, Eleanor J. Kerrigan)
U.S. DISTRICT COURT
DISTRICT OF MASS.

Plaintiff,

v.

JOHN W. CURRAN,
DIEBOLD, INC. and CRAWFORD
& COMPANY

Defendants.

NOTICE OF REMOVAL

FILING FEE PAID:

RECEIPT #

AMOUNT \$

BY DPTY CLERK

DATE

04-12133 RCL

TO: THE HONORABLE JUDGES OF THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

The defendants, JOHN W. CURRAN and DIEBOLD, INC., (hereinafter referred to as "Defendants"), by and through their attorneys, Taylor, Duane, Barton & Gilman, LLP respectfully says:

1. The plaintiffs commenced the above-captioned action on or about August 11, 2004, by filing a Complaint in the Superior Court Department of the Trial Court, Middlesex County, Commonwealth of Massachusetts, entitled Eleanor J. Kerrigan and Sean J. Kerrigan, a minor child, by his parent and next best friend Eleanor J. Kerrigan v. John W. Curran, Diebold, Inc. and Crawford & Company, Civil Action No. 2004-03153-E. This action is now pending in that Court.

2. On or about September 20, 2004, the plaintiff served copies of the Summons and Complaint upon the Defendant, Diebold, Inc., via CT Corporation, its registered agent.

A copy of each of the foregoing papers, which constitute all of the processes and pleadings to date, are annexed hereto as Exhibit "A."

3. This claim or cause of action is one over which the Court has original jurisdiction under the provisions of 28 U.S.C. §1332, and is one that may be removed to this Court by the Defendants pursuant to the provisions of 28 U.S.C. §1441.

4. This Court has diversity jurisdiction pursuant to 28 U.S.C. §1332, in that:

(a) Defendant Diebold, Inc. is a corporation organized under the laws of the State of Ohio. The Defendant's principal place of business is located at 5995 Mayfair Road, North Canton, Ohio 44707. The Defendant, John W. Curran, is an employee of Diebold, Inc. and is a resident of the state of New York.

(b) According to paragraphs 1 and 2 of the plaintiffs' Complaint, the plaintiffs are individuals who reside at 33 Draper Street, Medford, Massachusetts 02155.

(c) This civil action is an action for "negligence" in which the amount in controversy, upon information and belief, exceeds the sum or value of \$75,000, exclusive of interest or costs, and is between citizens of different states. According to her Complaint, the plaintiff, Eleanor J. Kerrigan, claims that she has sustained severe and permanent physical injury, suffered great pain of body and anguish of mind, and that she should be sufficiently compensated for her claimed losses and damages. The civil action cover sheet filed by the plaintiff in the state court action states that the plaintiff has already incurred \$81,273 dollars in medical expenses and lost earnings alone, and further states that the damages sought by both plaintiffs is \$994,639.27. Therefore, this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. §1332.

5. This Notice of Removal is filed within the time provided by 28 U.S.C. §1446(b) and the Federal Rules of Civil Procedure.

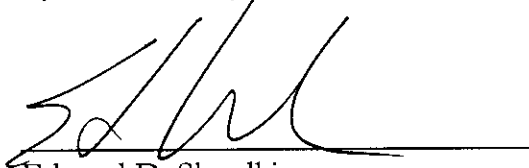
6. Upon the filing of this Notice of Removal, the Defendants shall give written notice thereof to Andrew J. Schultz, Esq., attorney for the plaintiffs, and to the co-defendant, Crawford & Company, and the Defendants shall file copies of this Notice of Removal and Notice of Filing of Removal, with the Court Clerk, Superior Court Department of the Trial Court, Commonwealth of Massachusetts, Middlesex County, Massachusetts.

7. By filing this Notice of Removal, the Defendants do not waive any defenses that may be available to them, specifically including, but not limited to, improper service of process, misnomer of a party and the absence of venue in this Court or in the Court from which this action has been removed.

WHEREFORE, the Defendants, John W. Curran and Diebold, Inc., remove the above-captioned action now pending against them in the Superior Court Department of the Trial Court, Commonwealth of Massachusetts, Middlesex County, Massachusetts to the United States District Court for the District of Massachusetts, wherein it shall proceed as an action originally commenced therein.

Dated: October 8, 2004

The Defendants,
JOHN W. CURRAN and DIEBOLD, INC.,
By their attorneys/



Edward D. Shoulkin

B.B.O. No. 555483

Edward Coburn

B.B.O. No. 655916

TAYLOR, DUANE, BARTON & GILMAN, LLP

160 Federal Street, 5th Floor

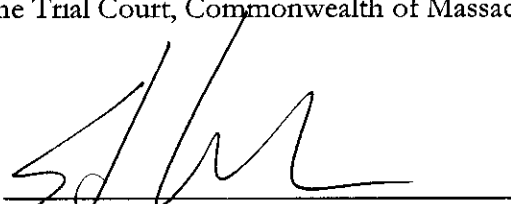
Boston, MA 02110

(617) 654-8200

CERTIFICATE OF SERVICE

I, Edward Coburn, hereby certify that on October 8, 2004, I caused a copy of the Defendants' Notice of Removal to be served by overnight mail, postage prepaid to Andrew J. Schultz, Esq., 50 Mall Road, Suite 209, Burlington, MA 01803, attorney for the plaintiffs, and to co-defendant, Crawford & Company, 110 Second Avenue, Needham, MA 02492.

I hereby further certify that on this date I caused a copy of Defendants' Notice of Filing of Removal together with a copy of the Notice of Removal to be delivered for filing by hand delivery, to the Civil Clerk, Superior Court Department of the Trial Court, Commonwealth of Massachusetts, Middlesex County, Massachusetts.



Edward Coburn